United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
and	)	**Docket No. 19-0868**
	)	**Issued: March 21, 2022**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Carmel, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 18, 2019 appellant filed a timely appeal from January 11 and March 1, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish disability from work during the period April 24, 2018 through January 10, 2019, causally related to his accepted September 27, 2017 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 11, 2019,

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the March 1, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

as he no longer had disability or residuals causally related to his accepted September 27, 2017 employment injury; and (3) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals on or after January 11, 2019 due to his accepted employment injury.

FACTUAL HISTORY

On September 27, 2017 appellant, then a 60-year-old clerk/lobby director, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his lower back when he slipped and fell as he walked from a pickup window while in the performance of duty. He stopped work on September 28, 2017.

On November 27, 2017 OWCP accepted appellant's claim for contusions of the lower back and pelvis, initial encounter. It paid him wage-loss compensation on the supplemental rolls from November 12, 2017 to March 2, 2018 and on the periodic rolls from March 4 to 31, 2018.

On March 28, 2018 appellant returned to a part-time modified position for five hours per day as a clerk, but later stopped work on April 24, 2018.

OWCP received an April 26, 2018 progress note by Dr. Dale A. Helman, a Board-certified neurologist, who noted a history of injury that approximately seven months prior, appellant slipped and fell backwards and severely twisted his lumbar spine at work. Dr. Helman reported findings on physical examination and provided an impression that it was "very likely there is some sort of nerve impingement." He performed an electromyogram/nerve conduction velocity (EMG/NCV) study on the same date of his examination and reported that it was abnormal due to right L5-S1 radiculopathy.

On May 11, 2018 appellant filed a claim for compensation (Form CA-7) seeking for disability from work from April 24 through May 4, 2018.

In support of his claim, appellant submitted medical reports dated April 24, 2018 from Dr. Timothy Wilken, an attending family practitioner. In these reports, Dr. Wilken noted a history of appellant's September 27, 2017 employment injury and diagnosed lumbar radiculopathy, lumbar and cervical strains, contusion of the lumbar region, and low back pain. He advised that he was unable to work until his next scheduled appointment in four weeks.

OWCP, in a May 21, 2018 development letter, informed appellant that the evidence submitted was insufficient to establish disability from April 24 to May 4, 2018 and requested that he submit additional evidence to establish his claim. It afforded him 30 days to submit the necessary evidence.

OWCP received an additional report dated May 22, 2018 by Dr. Wilken who reiterated appellant's history of injury and repeated his prior diagnoses of lumbar radiculopathy, lumbar and cervical strains, contusion of the lumbar region, and low back pain. Additionally, Dr. Wilken continued to advise that appellant was unable to work until his next scheduled appointment in four weeks.

Appellant filed additional CA-7 forms claiming compensation for disability from work from May 4 to 31, and June 2 to 30, 2018.

In support of his claims, appellant submitted a May 22, 2018 duty status report (Form CA-17) from Dr. Wilken who provided diagnoses "due to injury" of lumbar and cervical strains. Dr. Wilken placed appellant off work.

By development letter dated July 9, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claims for disability compensation commencing April 24, 2018, but that he would be referred to a second opinion examination by a Board-certified specialist.

OWCP thereafter received a July 5, 2018 EMG/NCV study by Dr. Helman, who reported bilateral C6-7 radiculopathy and bilateral carpal tunnel syndrome.

On July 16, 2018 OWCP referred appellant's claim, the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether he continued to have residuals and disability causally related to his accepted September 27, 2017 employment injury.

In narrative reports and a Form CA-17 report dated July 17, 2018, Dr. Wilken reiterated his prior assessments of appellant's lumbar and cervical conditions and opinion that he was unable to work. He also provided a diagnosis of herniated lumbar disc with myleopathy. In the Form CA-17 report, Dr. Wilken again provided diagnoses of cervical and lumbar strains "due to injury."

Appellant continued to file CA-7 forms claiming compensation for disability from work from July 28 to August 24, 2018.

In support thereof, appellant submitted reports dated June 19 and August 14, 2018 from Dr. Wilken, who continued to restate his prior assessments of appellant's lumbar and cervical conditions and opinion that he could not work. On an August 14, 2018 Form CA-17 report Dr. Wilken listed the date of injury as September 27, 2017 and again reiterated his prior diagnosis of herniated lumbar disc with myelopathy "due to injury."

In a July 26, 2018 report, Dr. Mark W. Howard, a Board-certified orthopedic surgeon, noted that appellant presented for consultation regarding lumbar spine problems he had since September 27, 2017. He discussed his examination findings and reviewed diagnostic test results. Dr. Howard provided diagnoses of low back pain and bilateral lower extremity radicular pain in the setting of mod-large right L4-5 disc bulge, L5-S1 disc degeneration, right L4 greater than right L5 foraminal stenosis, left L5 greater than left L4 foraminal stenosis, L5-S1 greater than L4-5 spondylolisthesis with demonstrated sagittal plane instability, and right L5-S1 radiculopathy based on Dr. Helman's April 26, 2018 EMG/NCV study.

Dr. Swartz, in an August 8, 2018 report, reviewed the SOAF and appellant's medical record. He reported his findings on examination and diagnosed lumbar and cervical strains, lumbar contusion, and lumbar radiculopathy. Dr. Swartz noted that a February 8, 2018 magnetic resonance imaging (MRI) scan study of the lumbar spine revealed no signal abnormalities of the lumbar spine or spinal cord/cauda equine, and no paravertebral soft tissue abnormality, marrow replacing lesion, or marrow edema, which indicated that appellant's claim of hitting his low back against a pole when he fell was in question and would be a minor event at most as none of these signals showed up on the MRI scan study reflecting a contusion of any significance. He indicated that an examination by Dr. Wilken on October 10, 2017 did not reveal any muscle spasm in the

lumbar spine which would basically rule out an injury of any significance whether it was a strain or contusion. Dr. Swartz further indicated that his examination revealed a normal range of motion of the lumbar spine, slight tenderness only and without any spasm in the neck and upper or lower back, and normal neurologic examination of the lower extremities. He opined that the injuries regarding appellant's claim had resolved, and no further treatment was required. Dr. Swartz further opined that he had an aggravation of preexisting lumbar conditions that ceased on the date of his examination. He concluded that appellant was capable of returning to his position as a clerk/lobby director which was basically his date-of-injury position. In an accompanying work capacity evaluation (Form OWCP-5c) of even date, Dr. Swartz advised that appellant could not perform his usual job without restrictions, but he could work eight hours per day with specific physical restrictions.

Appellant filed several additional CA-7 forms claiming compensation for intermittent periods of disability from August 25 to December 14, 2018.

In additional narrative reports and Form CA-17 reports dated June 19, August 14, September 11, October 9, and November 6, 2018, Dr. Wilken reiterated his prior lumbar and cervical assessments and opinion that appellant was unable to work. In the October 9 and November 6, 2018 Form CA-17 reports, he continued to list the date of injury as September 27, 2017, indicate that appellant's diagnoses of herniated lumbar disc, lumbar strain with radiculopathy, and cervical strain were "due to injury," and advise that he was unable to work.

Dr. Howard, in an August 14, 2018 report, reiterated his prior diagnoses of low back pain, bilateral lower extremity radicular pain in the setting of mod-large right L4-5 disc bulge, L5-S1 disc degeneration, right L4 greater than right L5 foraminal stenosis, left L5 greater than left L4 foraminal stenosis, L5-S1 greater than L4-5 spondylolisthesis with demonstrated sagittal plane instability, and right L5-S1 radiculopathy based on Dr. Helman's April 26, 2018 EMG/NCV study.

In a November 11, 2018 report, Dr. Scott Prysi, a family practitioner, noted a date of injury as September 27, 2017. He discussed findings on examination and provided diagnoses of lumbar radiculopathy, lumbar strain, lumbar region contusion, and low back pain. Dr. Prysi advised that appellant could perform modified work with restrictions until his next scheduled appointment.

On November 21, 2018 Dr. Victor Li, Board-certified in pain medicine, reported a history of the September 27, 2017 employment injury. He also reported examination findings and reviewed diagnostic test results. Dr. Li provided diagnoses of myofascial pain, and spondylosis and radiculopathy of the lumbar region. He advised that appellant's work status was permanent and stationary.

By notice dated December 11, 2018, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. Swartz's opinion that the accepted conditions had ceased without residuals and that he was not disabled from work. It afforded him 30 days to submit additional evidence or argument challenging the proposed action.

OWCP subsequently received narrative reports and a Form CA-17 dated December 17, 2018 from Dr. Prysi who restated his prior diagnoses of lumbar radiculopathy, lumbar strain, lumbar region contusion, and low back pain, and his opinion that appellant could perform modified work until his next scheduled appointment. In the December 17, 2018 Form CA-17 report,

Dr. Prysi listed September 27, 2017 as the date of injury and provided diagnoses of lumbar spine strain and radiculopathy "due to injury." He advised that appellant could work with restrictions. In a letter of even date, Dr. Prysi noted that he had reviewed Dr. Swartz's August 8, 2018 report[3] and disagreed with his findings. He noted that appellant had a baseline pain level of 7 out of 10 and he was unable to sit or stand for more than 30 minutes. Dr. Prysi further noted that, based on his physical examination, he could not lift more than 10 pounds at work. He maintained that it was not possible for appellant to return to full-duty work.

OWCP also received a September 27, 2017 lumbar spine x-ray report by Dr. Tracy Chen, a diagnostic radiologist, who provided impressions of no acute osseous pathology, grade 1 anterolisthesis of L5-S1, degenerative disc disease at L5-S1, and mild multilevel degenerative arthrosis.

By decision dated January 11, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that Dr. Swartz's opinion was entitled to the weight of the medical evidence.

OWCP thereafter received an additional Form CA-17 report dated January 14, 2019 from Dr. Prysi. Dr. Prysi continued to note September 27, 2017 as the date of injury, provide a diagnosis of lumbar strain "due to injury," and opine that appellant could work with restrictions.

On January 6, 2019 appellant filed another Form CA-7 seeking compensation for disability from December 14, 2018 to January 11, 2019. On the reverse side of the claim form the employing establishment noted that he did not sign its job offer for modified work.[4]

Dr. Prysi, in a January 14, 2019 narrative report, restated appellant's lumbar assessments and opinion that he could perform modified work until his next scheduled appointment.

In a January 16, 2019 progress report, Dr. Li diagnosed contusion of the lower back. He noted that appellant did not work and restated his prior opinion that appellant's work status was permanent and stationary.

OWCP, by decision dated March 1, 2019, denied appellant's claims for compensation for the period April 24, 2018 through January 10, 2019, finding that the medical evidence of record was insufficient to establish that the claimed disability was causally related to his accepted September 27, 2017 employment injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which

[3] The Board notes that it appears that Dr. Prysi inadvertently indicated that the date of Dr. Swartz's report was dated November 19, 2018 rather than August 8, 2018 as the only report of record by Dr. Swartz is dated August 8, 2018.

[4] On January 18, 2019 the employing establishment offered appellant a modified clerk position based on the medical documentation from his treating physician. Appellant rejected the job offer contending that it did not meet his physician's restrictions.

[5] *Supra* note 1.

compensation is claimed is causally related to the employment injury.[6] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[7] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.[8]

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[9] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[10]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[11] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.[12]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish disability during the period April 24, 2018 through January 10, 2019, causally related to his accepted September 27, 2017 employment injury.

In support of his claims for compensation, appellant submitted a series of reports from Dr. Wilken. In Form CA-17 reports dated May 22 through November 6, 2018, Dr. Wilken noted diagnoses of herniated lumbar disc, lumbar strain with radiculopathy, and cervical strain "due to injury" on September 27, 2017. Although he found employment-related disability in these reports, they are of limited probative value in establishing appellant's claim for disability during the period April 24, 2018 through January 10, 2019 as he did not explain why he was disabled during this time period due to objective medical findings of his accepted conditions. To establish a period of disability the medical evidence must provide a discussion of how objective medical findings attributable to the accepted conditions support a finding that appellant could not perform his job

[6] *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[8] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[9] *Id.* at § 10.5(f); *see e.g., G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[10] *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[11] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[12] *Id*

duties.[13] A medical opinion is of limited value if it is conclusory in nature.[14] In narrative reports dated April 24 through November 6, 2018, Dr. Wilken reiterated his prior nonaccepted diagnoses of lumbar radiculopathy, lumbar strain, cervical strain, herniated lumbar disc. He also diagnosed contusion of the lumbar region and low back pain. Dr. Wilken opined that appellant was totally disabled from work. However, he did not relate appellant's disability to the accepted September 27, 2017 employment injury and the opinion is therefore of diminished probative value.[15] For these reasons, the Board finds that Dr. Wilken's reports are insufficient to establish appellant's disability claim.

Dr. Helman's April 26, 2018 progress note related a history of the September 27, 2017 employment injury and indicated that it was "very likely there is some sort of nerve impingement" of the lumbar spine. The Board finds his opinion is speculative and equivocal and therefore, insufficient to establish her burden of proof.[16]

In reports dated April 26 and July 5, 2018, Dr. Helman provided EMG/NCV study results. The Board has consistently held that diagnostic test studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused the diagnosed condition.[17] For these reasons, the Board finds that the medical evidence from Dr. Helman is insufficient to establish appellant's disability claim.

Dr. Howard's July 26 and August 14, 2018 reports provided diagnoses of low back pain and bilateral lower extremity radicular pain in the setting of mod-large right L4-5 disc bulge, L5-S1 disc degeneration, right L4 greater than right L5 foraminal stenosis, left L5 greater than left L4 foraminal stenosis, L5-S1 greater than L4-5 spondylolisthesis with demonstrated sagittal plane instability, and right L5-S1 radiculopathy. He noted that appellant had lumbar spine problems since September 27, 2017. Dr. Li, in a report dated November 21, 2018, noted a history of the September 27, 2017 employment injury and provided diagnoses of myofascial pain, spondylosis, and radiculopathy of the lumbar region. He advised that appellant's work status was permanent and stationary. Neither physician offered an opinion as to whether appellant was disabled from work due to the accepted employment injury.[18] Accordingly, the reports of Dr. Howard and Dr. Li are of no probative value and are insufficient to establish the claimed period of disability.

[13] *See M.M.*, Docket No. 19-0061 (issued November 21, 2019); *W.E.*, Docket No. 17-0451 (issued November 20, 2017).

[14] *See R.B.*, Docket No. 19-1527 (issued July 20, 2020); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

[15] *See J.K.*, Docket No. 19-0488 (issued June 5, 2020); *M.M., supra* note 13; *E.B.*, Docket No. 17-0875 (issued December 13, 2018).

[16] *See G.H.*, Docket No. 20-0892 (issued July 9, 2021); *I.J.*, 59 ECAB 408 (2008).

[17] *See T.G.*, Docket No. 20-0032 (issued November 10, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019).

[18] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Dr. Chen's September 27, 2017 lumbar spine x-ray report is insufficient to establish disability as it predates and, therefore, does not address the claimed period of disability.[19]

Dr. Swartz, the second opinion physician, in an August 8, 2018 report and Form OWCP-5c, opined that appellant's accepted September 27, 2017 employment-related conditions and aggravation of preexisting lumbar conditions had resolved and no further treatment was required. He further opined that appellant was not totally disabled from work and he was capable of returning to his clerk/lobby director position. Dr. Swartz reasoned that a February 8, 2018 lumbar spine MRI scan study, Dr. Wilken's October 10, 2017 examination findings, and his essentially normal examination findings, with the exception of slight tenderness, revealed no objective residuals of the accepted conditions. As Dr. Swartz reviewed the medical record and supported his conclusion with medical rationale, the Board finds that his report represents the weight of the evidence regarding appellant's claims for total disability.[20]

Dr. Prysi reviewed Dr. Swartz's August 8, 2018 report, and in a December 17, 2018 letter, disagreed with his conclusion that appellant could return to full-duty work because his pain level and inability to sit or stand for more than 30 minutes and lift more than 10 pounds at work prevented him from returning to work. His November 11 and December 17, 2018 narrative reports provided diagnoses of lumbar radiculopathy, lumbar strain, lumbar region contusion, and low back pain. Dr. Prysi also provided appellant's work restrictions but did not opine that he was ever totally disabled from work for the claimed period due to his September 27, 2017 employment injury.[21] His remaining December 17, 2018 Form CA-17 report reiterated his diagnoses of lumbar spine strain and lumbar radiculopathy and found that the diagnosed conditions were due to the September 27, 2017 employment injury. Dr. Prysi did not, however, provide an opinion or specify that appellant's ability to perform modified-duty work was due to his September 27, 2017 employment injury.[22] For these reasons, his reports are insufficient to overcome the weight accorded to Dr. Swartz's second opinion report or to create a conflict in the medical opinion evidence.[23]

As the medical evidence of record is insufficient to establish that appellant was disabled from work for the period April 24, 2018 through January 10, 2019 causally related to his accepted September 27, 2017 employment injury, the Board finds that appellant has not met his burden of proof.

[19] *See M.L.*, Docket Nos. 18-1058 and 18-1224 (issued November 21, 2019); *D.J.*, Docket No. 18-0200 (issued August 12, 2019); *V.G.*, Docket No. 17-1425 (issued February 16, 2018).

[20] *See M.L., id*.

[21] *Supra* note 18.

[22] *See M.M.*, Docket No. 18-0817 (issued May 17, 2019); *see also supra* note 18.

[23] *See id*.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.[24] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[25] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[26]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[27] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[28]

ANALYSIS -- ISSUE 2

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 11, 2019, as he no longer had disability or residuals causally related to his accepted September 27, 2017 employment injury.

As previously discussed, Dr. Swartz, in his comprehensive August 8, 2018 second opinion report, explained that there were no objective findings based on the February 8, 2018 lumbar spine MRI scan study, Dr. Wilken's October 10, 2017 examination findings, and his own essentially normal examination findings which supported ongoing residuals or disability due to appellant's accepted September 27, 2017 employment injury. He opined that appellant could return to his clerk/lobby director position and he did not require further medical treatment.

Subsequent to Dr. Swartz's evaluation, appellant was evaluated by Dr. Wilken on September 11, 2018, Dr. Howard on August 14, 2018, Dr. Li on November 21, 2018, and Dr. Prysi on November 11 and December 17, 2018. As previously discussed, none of these physicians provided a well-reasoned explanation as to why appellant continued to have residuals or disability for work due to the September 27, 2017 employment injury.

Appellant submitted Dr. Chen's September 27, 2017 lumbar spine x-ray report and Dr. Helman's April 26, 2018 EMG/NCV study report. The Board has held, however, that

[24] *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[25] *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[26] *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[27] *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

[28] *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the implicated employment factors caused the diagnosed conditions.[29]

The Board finds Dr. Swartz's well-rationalized opinion to be probative evidence and reliable and sufficient to justify OWCP's termination of wage-loss compensation and medical benefits, effective January 11, 2019.[30] The medical evidence from appellant's physicians is insufficient to overcome the weight accorded to Dr. Swartz's second opinion or to create a conflict.[31] OWCP, therefore, has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 3

Once OWCP properly terminated compensation benefits, the burden shifts to appellant to establish continuing disability after that date causally related to the accepted injury.[32] To establish causal relationship between the accepted conditions as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.[33]

ANALYSIS -- ISSUE 3

The Board finds that appellant has not met his burden of proof to establish continuing employment-related disability or residuals on or after January 11, 2019 due to his accepted employment injury.

Subsequent to the termination of his wage-loss compensation and medical benefits, appellant submitted reports dated January 14, 2019 from Dr. Prysi. In a January 14, 2019 Form CA-17 report, Dr. Prysi diagnosed lumbar strain due to the September 27, 2017 employment injury and advised that appellant could work with restrictions. In a narrative report of even date, he restated his prior diagnoses of lumbar radiculopathy, strain, and contusion, and low back pain. Dr. Prysi also reiterated his prior opinion that appellant could perform modified work. However, he failed to explain with rationale why the work restrictions were causally related to the September 27, 2017 employment injury.[34] Consequently, Dr. Prysi's reports are of diminished probative value and insufficient to establish continuing employment-related residuals or disability.

In his January 16, 2019 progress report, Dr. Li diagnosed lower back contusion. He indicated that appellant did not work and again opined that appellant's work status was permanent

[29] *See J.H.*, Docket No. 17-1916 (issued January 9, 2019); *T.H.*, Docket No. 17-0025 (issued July 6, 2017).

[30] *V.D.*, Docket No. 19-0979 (issued February 5, 2020); *T.W.*, Docket No. 18-1573 (issued July 19, 2019); *M.C.*, Docket No. 18-1199 (issued April 5, 2019); *see also A.C.*, Docket No. 16-1670 (issued April 6, 2018).

[31] *See M.M.*, *supra* note 13.

[32] *See J.N.*, Docket No. 20-1030 (issued November 20, 2020); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *L.C.*, Docket No. 18-1759 (issued June 26, 2019).

[33] *Id.*

[34] *See D.Y.*, Docket No. 20-0112 (June 25, 2020).

and stationary. Dr. Li did not, however, provide a rationalized opinion as to whether appellant's disability was causally related to the accepted employment injury. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale.[35]

Appellant has not submitted rationalized medical evidence establishing continuing employment-related disability or residuals on or after January 11, 2019 due to the accepted September 27, 2017 employment injury. As such, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability during the period April 24, 2018 through January 10, 2019, causally related to his accepted September 27, 2017 employment injury. The Board further finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 11, 2019, as he no longer had disability or residuals causally related to his accepted September 27, 2017 employment injury. The Board also finds that appellant has not met his burden of proof to establish continuing employment-related disability or residuals on or after January 11, 2019 due to his accepted employment injury.

[35] *See L.S.*, Docket No. 19-0959 (issued September 24, 2019); *M.H.*, Docket No. 17-0210 (issued June 3, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 11 and March 1, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 21, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board